

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

**DIVISION OF WATER RIGHTS**

**ORDER**

Application 29882 Permit 20774 License                     

**ORDER AMENDING PERMIT  
BY ADDITION OF TERMS AND CONDITIONS  
TO CONFORM WITH ORDER WR 96-002**

**WHEREAS:**

1. Permit 20774 was issued Usibell Coal Mine, Inc. on February 15, 1995 pursuant to Application 29882.
2. Permittee is a signatory to the March 10, 1995 Condition 12 Settlement Agreement (Agreement) between U.S. Bureau of Reclamation, Solano County Water Agency, and nearly all post-1945 appropriative water right holders in the Putah Creek watershed above Monticello Dam.
3. Order WR 96-002 was adopted by the State Water Resources Control Board on February 27, 1996.
4. Both the Agreement and the Order subject the permit to the following conditions.

**NOW, THEREFORE, IT IS ORDERED THAT THE FOLLOWING CONDITIONS BE  
ADDED TO THE PERMIT:**

Permittee shall comply with the following provisions which are derived from the Condition 12 Settlement Agreement dated March 10, 1995 (Agreement) pursuant to the Sacramento County Superior Court, Judicial Council Coordination Proceeding No. 2565:

- (1) Permittee is hereby put on notice that the Sacramento County Superior Court, Judicial Council Coordination Proceeding No. 2565, has retained jurisdiction over the parties and, upon application by the watermaster, has the right to temporarily enjoin the diversion of water under this permit for noncompliance with the terms of the Agreement.
- (2) Diversion of water under this permit shall be subject to the watermaster appointed by the court to enforce the terms of the Agreement. The permittee shall be responsible for partial payment of the watermaster costs in accordance with the terms of the Agreement.
- (3) Within one year of the construction of the reservoir covered by this permit, permittee shall have the capacity of the reservoir surveyed by a registered civil engineer or licensed surveyor. A copy of the survey and area-capacity curve shall be provided to the watermaster and the SWRCB.

(4) Permittee shall install and properly maintain in the reservoir a staff gage, satisfactory to the watermaster and the SWRCB, for the purpose of determining water levels in the reservoir. Permittee shall record the staff gage readings on October 1 of each year and April 30 of the succeeding year, or such other period as may be specified by the watermaster with written notice to the permittee.

(4) Permittee shall maintain monthly records of diversion to offstream storage from October 1 of each year to April 30 of the succeeding year, or such other period as may be specified with written notice to the permittee by the watermaster.

(5) Permittee shall report to the watermaster annually, all diversions under this permit by September 1 of each year on forms approved by the watermaster.

(6) Permittee shall allow the watermaster reasonable access to the project covered by this permit to inspect measuring equipment and to observe compliance with these permit terms and conditions, upon 48-hour prior notice and upon such reasonable conditions as permittee may prescribe.

(7) Permittee is hereby put on notice that there may be years when diversion of water under this permit will not be within the reservation of water established for the Putah Creek watershed upstream of Monticello Dam, as set forth in the Agreement and that in those years no water may be available under this permit, and that releases of stored water may be required.

(8) Permittee is hereby put on notice that the waiver of priority granted by Reclamation and Solano County Water Agency provides that in the event Allowable Depletion is exceeded in any year, water diverted to storage that year shall be released and/or direct diversions shall be curtailed during the ensuing season(s), when applicable, to the extent necessary to bring the Allowable Depletion into compliance, in the following order:

a. All amounts directly diverted and/or diverted to storage by holders of Post-Reservation Water Rights in excess of 120 percent of that water right holder's previous five-year average, in reverse order of water right priority.

b. All amounts directly diverted and/or diverted to storage by holders of Post-Reservation Water Rights above the previous five-year average diversion, in reverse order of priority.

c. All remaining water directly diverted and/or diverted to storage that year by holders of Post-Reservation Water Rights in reverse order of priority.

(9) In any year in which Annual Depletion exceeds Allowable Depletion, if Lake Berryessa: (1) does not drop below 640,000 acre-feet in storage as of May 1, permittee shall have three years, starting in the next Accumulation Season, to make up or repay permittee's excess diversions; or (2) does not reach 640,000 acre-feet of storage as of May 1, permittee shall have one year, starting in the next Accumulation Season, to make up or repay permittee's excess diversions. In the event that Lake Berryessa spills at any time prior to full payback of excess depletion, permittee shall be excused from any further obligation for repayment of the overage.

(10) Permittee shall provide watermaster prior notice of any repayment. Repayment may be made either by releases from storage, curtailment of direct diversion, or by the provision of water from other sources.

(11) Permittee shall notify the watermaster of any change in ownership of land, changes in the water right, or changes in address related to the permit.

(12) Permittee is hereby put on notice of permittee's right, upon reasonable prior notice, to inspect and to copy, at permittee's own expense, all records and reports of the watermaster.

(13) Solely for purposes of administering Post-Reservation Depletion, the average annual depletion assigned to this project is 215 acre-feet per annum as calculated by the watermaster using information described in Exhibit C of the Condition 12 Settlement Agreement. Permittee shall notify the watermaster of any change in crop type, acreage irrigated, and irrigation method. Any change in water usage which results in an increase in average annual depletion of more than 10 percent for non-weather related reasons, as determined by the watermaster, will require filing a new water right application. (Agreement pp. 13-15, Exhibit E)

Inclusion in the permit of certain provisions of this Agreement shall not be construed as disapproval of other provisions of the Agreement or as affecting the enforceability, as between the parties, of such other provisions insofar as they are not inconsistent with the terms of this permit.

(0000024)


The State Water Resources Control Board (SWRCB) shall have continuing authority under Article X, Section 2 of the California Constitution, Water Code Sections 100 and 275, and the common law public trust doctrine over this permit to delete, revise, amend, or adopt new terms or conditions to:

(1) implement the March 10, 1995, Condition 12 Settlement Agreement and any amendments to the agreement and (2) make the terms or conditions consistent with any order of the superior court. No action shall be taken pursuant to this paragraph unless the SWRCB provides notice to affected parties and provides an opportunity for a hearing.

(0000012)

Dated:

MARCH 9 1998

*for*   
Edward C. Anton, Chief  
Division of Water Rights

STATE OF CALIFORNIA  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
STATE WATER RESOURCES CONTROL BOARD

**DIVISION OF WATER RIGHTS**

**PERMIT FOR DIVERSION AND USE OF WATER**

**PERMIT 20774**

Application 29882 of Usibelli Coal Mine, Inc.

Pouch 1000, Healy, AK 99743

filed on December 17, 1990, has been approved by the State Water Resources Control Board  
SUBJECT TO PRIOR RIGHTS and to the limitations and conditions of this permit.

Permittee is hereby authorized to divert and use water as follows:

1. Source:

Tributary to:

Maxwell Creek (POD #1 & 4)

Pope Creek thence

Putah Creek thence

Yolo Bypass

Unnamed Stream (POD #2 & 3)

Burton Creek thence

Maxwell Creek thence

Pope Creek

2. Location of point of diversion:	40-acre subdivision of public land survey or projection thereof	Section	Township	Range	Base and Meridian
1) North 338,600 feet and East 1,890,500 feet	NE $\frac{1}{4}$ of NW $\frac{1}{4}$	35	9N	5W	MD
<u>Usibelli No. 2 Reservoir</u> 2) North 342,000 feet and East 1,889,800 feet	SE $\frac{1}{4}$ of NW $\frac{1}{4}$	26	9N	5W	MD
3) North 341,800 feet and East 1,885,700 feet	SW $\frac{1}{4}$ of NE $\frac{1}{4}$	27	9N	5W	MD
4) North 340,850 feet and East 1,892,550 feet	NE $\frac{1}{4}$ of SE $\frac{1}{4}$	26	9N	5W	MD
All in Zone 2 of California Coordinate System					

County of Napa

3. Purpose of use:	4. Place of use:	Section	Township	Range	Base and Meridian	Acres
Stockwatering	at Usibelli No. 2 Reservoir within SE $\frac{1}{4}$ of NW $\frac{1}{4}$	26	9N	5W	MD	
Heat Control						
Frost Protection						
Irrigation	See Addendum Sheet					

The place of use is shown on map on file with the State Water Resources Control Board.

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 345 acre-feet per annum to be collected from November 1 of each year to May 1 of the succeeding year. (0000005)

This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose. The maximum rate of diversion to offstream storage shall not exceed 7.5 cubic feet per second. (000005I)

6. The amount authorized for appropriation may be reduced in the license if investigation warrants. (0000006)

7. Complete application of the water to the authorized use shall be made by December 31, 1998. (0000009)

8. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board until a license is issued. (0000010)

9. Permittee shall allow representatives of the State Water Resources Control Board and other parties, as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit. (0000011)

10. Pursuant to California Water Code Sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and

**ADDENDUM**

3. Purpose of use:	4. Place of use:	Section	Township	Range	Base and Meridian	Acres
	SW $\frac{1}{4}$ of SW $\frac{1}{4}$	23	9N	5W	MD	1.2
	SE $\frac{1}{4}$ of SW $\frac{1}{4}$	23	9N	5W	MD	15.9
	SW $\frac{1}{4}$ of SE $\frac{1}{4}$	23	9N	5W	MD	0.5
	NW $\frac{1}{4}$ of SW $\frac{1}{4}$	25	9N	5W	MD	19.5
	SW $\frac{1}{4}$ of SW $\frac{1}{4}$	25	9N	5W	MD	3.1
	SW $\frac{1}{4}$ of NW $\frac{1}{4}$	25	9N	5W	MD	22.9
	SE $\frac{1}{4}$ of NW $\frac{1}{4}$	25	9N	5W	MD	1.1
	NE $\frac{1}{4}$ of SW $\frac{1}{4}$	25	9N	5W	MD	0.1
	NW $\frac{1}{4}$ of NW $\frac{1}{4}$	26	9N	5W	MD	9.5
	NE $\frac{1}{4}$ of NW $\frac{1}{4}$	26	9N	5W	MD	14.8
	NW $\frac{1}{4}$ of NE $\frac{1}{4}$	26	9N	5W	MD	34.6
	NE $\frac{1}{4}$ of NE $\frac{1}{4}$	26	9N	5W	MD	12.3
	SW $\frac{1}{4}$ of NW $\frac{1}{4}$	26	9N	5W	MD	14.7
	SE $\frac{1}{4}$ of NW $\frac{1}{4}$	26	9N	5W	MD	33.0
	SW $\frac{1}{4}$ of NE $\frac{1}{4}$	26	9N	5W	MD	38.8
	SE $\frac{1}{4}$ of NE $\frac{1}{4}$	26	9N	5W	MD	36.2
	NE $\frac{1}{4}$ of SW $\frac{1}{4}$	26	9N	5W	MD	20.5
	NW $\frac{1}{4}$ of SE $\frac{1}{4}$	26	9N	5W	MD	30.6
	NE $\frac{1}{4}$ of SE $\frac{1}{4}$	26	9N	5W	MD	28.8
	SE $\frac{1}{4}$ of SW $\frac{1}{4}$	26	9N	5W	MD	6.7
	SW $\frac{1}{4}$ of SE $\frac{1}{4}$	26	9N	5W	MD	4.0
	SE $\frac{1}{4}$ of SE $\frac{1}{4}$	26	9N	5W	MD	8.9
<b>TOTAL</b>						<b>357.70</b>

quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

The continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the Board also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust. (0000012)

11. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1)adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2)the water quality objectives cannot be achieved solely through the control of waste discharges. (0000013)

12. The State Water Resources Control Board reserves jurisdiction to impose conditions to conform this permit to Board policy on use of water for frost protection. Action by the Board will be taken only after notice to interested parties and opportunity for hearing. (0000020)

13. To the extent that water available for use under this permit is return flow, imported water, or wastewater, this permit shall not be construed as giving any assurance that such supply will continue. (0000025)

14. Permittee shall install and maintain devices satisfactory to the State Water Resources Control Board to measure the rate and quantity of water diverted into the reservoir from PODS #1 and 4 on Maxwell Creek and POD #3 on Unnamed Stream, and water released from or flowing out of the reservoir. (0060046)

15. Permittee shall install and properly maintain in the reservoir a staff gage, satisfactory to the State Water Resources Control Board, for the purpose of determining water levels in the reservoir.

Permittee shall record the staff gage reading on or about October 1 of each year. Such reading shall be supplied to the State Water Resources Control Board with the next progress report submitted to the Board by permittee.

The State Water Resources Control Board may require the release of water which cannot be verified as having been collected to storage prior to October 1 of each year. (0070047)  
(0100047)

16. For the protection of fish and wildlife, permittee shall during the period:

(a) from November 1 through February 29 bypass a minimum of 7 cfs

(b) from March 1 through May 1 bypass a minimum of 2 cfs

The total streamflow shall be bypassed whenever it is less than the designated amount. (0140060)

17. Permittee shall install a device, satisfactory to the State Water Resources Control Board, which is capable of measuring the bypass flows required by the conditions of this permit. Said measuring device shall be properly maintained. (0060062)

18. No water shall be diverted under this permit at Point of Diversion #1 (POD #1) until Permittee has installed a fish screen at POD #1 which conforms to the fish screen designed approved by the Department of Fish and Game (DF&G) in its letter dated June 1, 1993. After installation of the screen, permittee shall visit POD #1 at least once daily while diversions are being made for purposes of clearing the screen of any obstructions. Permittee shall maintain the screen in good working order, so long as diversions are being made from POD #1. (0000063)

19. Permittee is hereby put on notice that there may be years when water collected to storage under this permit will not be within the reservation of water established for the watershed upstream from Lake Berryessa in State Water Resources Control Board Decision 869. During such years, unless replacement water is provided on an exchange basis, permittee shall release water collected to storage under this permit during the preceding collection season at the maximum practical rate to flow into Lake Berryessa. (0220087)

20. The total quantity of water diverted under this permit, together with that diverted under the licenses issued pursuant to Applications #18405, 22739, and 26783, shall not exceed 900 AFA. (0000114)

21. Permittee shall maintain the existing outlet pipe for Usibelli #2 Reservoir in proper working order. (0050044)



22. This permit is specifically subject to any legally held prior right of St. Supery Vineyards and Winery under appropriation issued pursuant to Permits 16674, 20177, and 20178 (Applications 23834, 27852 and 27853 respectively). (000T001)  
(006T001)

23. The archeological site described as CA-NAP-19 (AKA the Usibelli Mound) shall be excluded from the parcel to be added to the project place of use. The archeological deposit shall not be impacted by any surface or subsurface disturbance resulting from the installation and/or maintenance of the proposed vineyard and the installation of any support facilities (i.e. pipelines and service roads). A stock fence shall be constructed around the portion of the site extending into the proposed vineyard installation and to limit access during operations.

If avoidance of the site (CA-NAP-19) is not feasible, the applicant must complete an archeological mitigation program approved by the Division of Water Rights staff. Costs of the archeological mitigation would be borne entirely by the applicant. (0380500)

This permit is issued and permittee takes it subject to the following provisions of the Water Code:

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Dated: FEBRUARY 15 1995

STATE WATER RESOURCES CONTROL BOARD

*Roger Schuman*  
for Chief, Division of Water Rights